IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTIETH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY**

**and**
**THE HON'BLE MR JUSTICE C.V.RAMULU**

**WRIT PETITION NO : 3261 of 2005**

Between:

Andhra Bank, Founder's Branch Machilipatnam
rep by Manager

**..... PETITIONER**

AND

1 The Deputy Commercial Tax Officer Commercial Tax Department, Machilipatnam, Krishna District
2 The Commercial Tax Officer Commercial Tax Department Machilipatnam, Krishna District
3 The Commissioner Commercial Taxes Department, Hyderabad
4 The Principal Secretary, Commercial Tax, Department Government of A.P. Hyderabad
5 Sri Venkateswara New Modern Rice Mill Plot No. 9 & 10, Industrial Estate Chilakalapudi, Machilipatnam Krishna District.

**..RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent No.1 in issuing form No.7, dated 5-1-2005 under Section 36 of A.P. Revenue Recovery Act, 1864 and Sale Notice, dated

18-1-2005, in regard to the 5th respondent's property to recover the sales tax dues without mentioning reserve price and ignoring the petitioner's right as a mortgagee and the petitioner's assurance that tax dues would be paid on first charge basis arbitrary and illegal and to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 1 to 3 in bringing the property of 5th respondent i.e. Rice Mill, Plant & Machinery and Land & Buildings, situated on Plot Nos. 9 & 10 Industrial Estate, Chilakapapudi, Machilipatnam, Krishna District as illegal, arbitrary.

**Counsel for the Petitioner: MR.A.KRISHNAM RAJU**

**Counsel for the Respondent Nos.1 to 4: SRI K. RAJI REDDY, SPECIAL STANDING COUNSEL FOR COMMERCIAL TAX**

**The Court made the following:**

**ORDER:** (Per BRSR,J)

Heard the learned counsel for the petitioner and the learned Special Standing Counsel appearing on behalf of the Department and at their request, the matter is taken up for final disposal even at this stage.

The petitioner-Andhra Bank, Founder's Branch, Machilipatnam, invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of *Mandamus* declaring the action of the first respondent-Deputy Commercial Tax Officer, Commercial Tax Department, Machilipatnam in issuing Form No.7, dated 05.01.2005, purporting it to be under Section 36 of the A.P. Revenue Recovery Act, 1864 and Sale Notice, dated 18.01.2005, in regard to the properties of the 5th respondent to recover the sales tax dues without mentioning reserve price and ignoring the petitioner's right as a mortgagee, as illegal. The petitioner accordingly prays for issuance of a consequential direction directing the respondents 1 to 3 not to proceed with the sale of the property.

The facts are not in dispute. The petitioner provided financial assistance of working capital of Rs.75,00,000/- to the fifth respondent herein, who committed default in repayment of the dues. The petitioner issued demand notice, dated 08.08.2003, under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and taken symbolic possession of the rice mill on 22.09.2004 and after taking possession, got published possession notice in the newspapers on 30.09.2004 as is required in law.

It appears, the first respondent in order to realize the arrears of sales tax to a tune of Rs.7,51,997/-, payable by the fifth respondent herein, sealed the rice

mill of the fifth respondent and accordingly issued the impugned notification proposing to auction the properties of the fifth respondent.

The petitioner vide letter, dated 08.01.2005, requested the first respondent to remove the lock enabling it to proceed further in the matter for realization of the amounts due from the fifth respondent by sale of the properties with further assurance that arrears of sales tax would be paid out of the sale proceeds to be derived from the sale of the secured assets. The first respondent was put on notice that the arrears of sales tax amounts to Rs.7.52 Lakhs only, in comparison to the total dues payable by the fifth respondent to the petitioner at Rs.69.04 Lakhs as on 31.07.2003 with a subsequent interest as per the agreement. The amount of dues payable to the Commercial Tax Department is comparatively 1/10$^{th}$ of the dues payable to the petitioner.

The letter, dated 08.01.2005, which is made part of the record, is specific and clear in its terms, whereunder and whereby the bank had undertaken to pay the sales tax dues to the Commercial Tax Department out of the sale proceeds to be derived from the sale of the secured assets. In our considered opinion, the respondents 1 to 3 ought to have acted on the basis of the letter, dated 08.01.2005, and removed the seal enabling the petitioner to proceed further in the matter for sale of the assets for realization of its dues, since a specific assurance has been given undertaking to pay the arrears of sales tax amounting to Rs.7.52 Lakhs, out of the sale proceeds to be realized. Instead, the respondents
1 to 3 have issued the impugned sale notification proposing to auction the properties of the fifth respondent for realization of the sales tax arrears. In comparison to the amounts payable by the fifth respondent to the petitioner herein, arrears of sales tax, payable to the first respondent, is insignificant. That at any rate, there is no reason not to act upon the assurance of the petitioner, which is one of the premier nationalized banks in the country.

The letter, dated 08.01.2005, addressed by the petitioner to the first respondent shall be treated as an undertaking given by the petitioner to pay the arrears of

sales tax amounting to Rs.7.52 Lakhs on priority basis to the respondents 1 to 3, from out of the sale proceeds to be derived from the sale of the secured assets. There shall be a direction to the petitioner to pay sum of Rs.7.52 Lakhs towards the arrears of sales tax to the respondents 1 to 3 immediately on the sale of the secured assets. Consequently, there shall be a direction to the respondents 1 to 3 to immediately open the seal enabling the petitioner-bank to proceed further in the matter for sale of the secured assets. The impugned sale notification is accordingly set aside.

The writ petition is accordingly disposed of without any order as to costs.

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**B. SUDERSHAN REDDY, J.**

Date: 20.04.2005.

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**C.V. RAMULU, J.**

Note: Furnish C.C. of the

Order by 25.04.2005.

(B/o)

**GS**

To

1 The Deputy Commercial Tax Officer, Commercial Tax Department, Machilipatnam, Krishna District.

2 The Commercial Tax Officer, Commercial Tax Department Machilipatnam, Krishna District.

3 The Commissioner Commercial Taxes Department, Hyderabad.

4 The Principal Secretary, Commercial Tax, Department Government of A.P. Hyderabad.

5 Two C.D. Copies.